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February 4, 2000

Lawrence M. Noble, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
6th Floor
Washington, DC 20463

Re: MUR 4956, Gore 2000, Inc.
Jose Villarreal, Treasurer

Dear Mr. Noble:

This is the response of Gore 2000, Inc. (the "Committee") and Jose Villarreal, as treasurer, to the complaint in the above-captioned matter. As more fully demonstrated below, the Commission should find no reason to believe that the Committee has violated any provision of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA"), 2 U.S.C. §431 et seq. or the Commission's regulations and dismiss this complaint forthwith.

I. Introduction

It should be noted at the outset that the complaint filed by Lyndon LaRouche's Committee For A New Bretton Woods, (the "complainant") names the Manchester Union Leader, New Hampshire Public Television, and New Cable News as the respondents against whom the complaint is being filed. Despite the fact that the complainant did not intend to name any presidential campaigns in this matter, the FEC, on its own initiative and without any consideration as to the merit of the claim, has made the Committee a respondent. While the Committee appreciates the opportunity to respond to this matter, for the reasons stated below naming the debate participants in this particular case as respondents is not only extraneous to the appropriate FEC analysis, it renders the Commission's debate regulations unworkable.

II. Background

Complainant's allegations, in short, contend that a debate held on January 5, 2000, in which Democratic contenders Al Gore and Bill Bradley participated, somehow constitutes a corporate contribution to their campaigns, despite the lack of any evidence or support for such allegations. All three joint sponsors of the debate are widely recognized and well-known media outlets in the state of New Hampshire. The complainant is simply trying to change a bona fide press event into a campaign event, even though the campaigns were not sponsors of the event, but were instead the invited participants. Based on Commission precedent, as well as the very clear application of Commission regulations, there is absolutely no merit to complainant's charges.

III. Discussion

A. Under the Commission's debate regulations, the debate in question cannot be considered a contribution to the participants.

Under 11 C.F.R. §110.13, which governs candidate debates, media outlets may stage a candidate debate, provided that they are not owned or controlled by a political party, political committee or candidate.[1] A debate must include at least two candidates, and the debate sponsor may not structure the debate to promote or advance one candidate over another. Nothing under 11 C.F.R. §110.13, requires the candidates, as a condition of participating, to make an independent conclusion as to whether the sponsor complied with the requirements of that section. In addition, nothing under that provision allows debate participants to dictate or otherwise select who else may participate, and the Committee was unable to do so here.

The clear language of §110.13 places the burden of determining and scheduling debate participants on the staging organizations themselves and not on each participant. The Commission could not have possibly intended that any candidate – eager to have his or her message heard – should have this burden. Here, the Committee was eager for its candidate to debate; it was not asked whether Mr. LaRouche should be invited, and it did not offer any suggestion or opinion on the issue.

As far as the Committee knew, then, two candidates were invited to participate, and the sponsors made their determination in accordance with the FEC's regulations. Certainly, the FEC's regulations do not require, or even suggest, that Vice President Gore decline to participate, where the sponsors' independent determination as to who should be included appears on its face to comply with FEC regulations.

[1] Complainant makes no allegation that any of these legitimate media outlets are owned or controlled by a party, committee or candidate.

Moreover, as a practical matter, to hold participating candidates responsible for the costs of the debates, when the sponsors have exercised their independent decision-making authority as to who should be included, is inconsistent with the Act and is unworkable in a presidential campaign. Clearly, participants should not have contributions attributed to them from the debate funding source, when the determination as to who to include in the debate was made independently by the sponsors.[2] To otherwise place the legal burden of shouldering the debate costs on the candidates will have an obvious chilling effect on the debates and cause candidates to decline participation in a forum which, to them, appears to be otherwise permissible.

B. Under the press exemption to the definition of contribution, the debate in question cannot be considered a contribution to the participants.

This debate unquestionably qualifies for the press exemption to the definition of contribution. See 11 C.F.R. §100.7(b)(2). As well recognized media outlets, the sponsors may hold such events as they deem newsworthy, in such a format and under such conditions as they design, as long as it is consistent with the so called press exemption. Complainant makes no allegation to the contrary, and this must be dispositive of this matter.

Moreover, the "reasonable opportunity" requirement of this exemption does not compel the inclusion of Mr. LaRouche in this event. To suggest the contrary would lead to absurd consequences – then any time a candidate appeared on a media-sponsored or broadcast show, e.g., Meet the Press, any other excluded candidate could file a complaint. The Commission has no jurisdiction to impose an equal time provision on a media-sponsored event. In fact, the Commission has a long history of deference to the media's determination of newsworthiness including format, sponsorship and coverage of events. Such deference should be accorded here.

C. The Commission has previously addressed and dismissed similar allegations.

The Commission has addressed and dismissed similar allegations in MURs 4473 and 4451, and on the identical basis here, should dismiss this matter as well. In each of those MURs, an uninvited candidate complained about a particular debate (in fact, such complaints are becoming routine.) The Commission rightfully dismissed those allegations and imposed no burden on the participants to unduly police legitimate bona fide debate events.

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[2] See Advisory Opinion 1986-37, Fed. Election Campaign Financing Guide, (CCH) ¶5875 (November 10, 1986.)

IV. Conclusion

Accordingly, the Committee, upon invitation to a bona fide media-sponsored debate, concluded that it would participate. Nothing in the FEC's regulation required the Committee to do otherwise, and nothing in the complaint can sustain a finding against the Committee. Therefore, the Committee respectfully requests that the Commission find no reason to believe that the Committee has violated any provision of the Act or regulations and close this matter as it pertains to the Committee.

Sincerely,

Eric Kleinfeld
Lyn Utrecht